

### **Remarks**

Claims 1-43 were presented for the Examiner's consideration. Claims 34-37 are withdrawn. By this Amendment, claims 1-2, 19-20, 22-31, and 39 are amended and claims 7 and 21 are canceled. Hence, claims 1-6, 8-20, 22-33, and 38-43 are currently pending in the application. Support for this Amendment is found in the specification at page 4, lines 1-5; page 6, lines 15-16 and lines 22-26; and the claims as originally filed. No new matter is added.

#### **I. Election/Restriction**

Applicants' affirm the election, without traverse, to prosecute Group I, claims 1-33 and 33-48.

#### **II. Drawings**

The drawings have been objected to for failing to show every feature specified in the claims. Specifically, the Office Action alleges that irregular spaced-apart support ribs of claims 7 and 21 must be shown.

Figure 10 has been added to illustrate the irregular spaced-apart support ribs. Support for new Figure 10 is found in the specification at page 6, lines 15-16 and in the claims as originally filed. Thus, Applicants submit that the objection to the drawings has been overcome.

Additionally, Figures 6 and 7 were inadvertently mislabeled and have been amended. The drawing previously labeled Figure 6 is now labeled Figure 7 and the drawing previously labeled Figure 7 is now labeled Figure 6. Support for this Amendment to the drawings is provided at page 8, lines 18-29 of the specification. It is clearly stated on page 8, lines 18-29 of the specification that Figure 6 should illustrate support ribs having truncated triangles, while Figure 7 should illustrate support ribs having curved, undulating lines. Thus, no new matter is added.

Additionally, Figures 6 and 7 were previously illustrated on two separate drawing sheets. Amended Figures 6 and 7 are now both illustrated on the same drawing sheet.

### III. Claim Objections

Claims 20-29 are objected to under 35 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of the claim. The dependencies of the claims have been amended to proper dependent form. Thus, the objection has been overcome and should be withdrawn.

### IV. 35 U.S.C. 102 Rejections

Claims 1, 11, 12, 19, 29, 30, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Coles et al. (U.S. Pat. No. 4,427,108). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference. Applicants respectfully submit that the cited reference does not anticipate the claims because the reference does not disclose all of the claim limitations.

Coles teaches a display unit comprising an elongated tray with walls which define a region accommodating a batch of sachets, the tray including longitudinal side walls with inwardly turned parts at each end, the parts being capable of providing support for another display unit placed above (See Abstract and Col. 1, lines 25-35).

Applicants' representatives have reviewed Coles et al. and have been unable to locate any teaching or suggestion of a package of flexible articles having an insert partially surrounding the flexible articles, wherein each side wall of the insert includes a **plurality of cut-outs** extending into the wall from the free edge thereof to form a **plurality of spaced-apart support ribs** as required by amended independent claims 1, 19, 30, and 38. Instead, Coles teaches longitudinal side walls formed by side flaps overlapping with and effectively forming part of the longitudinal side

walls. Each of Coles' side walls define only one cut-out. Coles does not teach or suggest the desirability of having a plurality of spaced apart ribs because a plurality of ribs would block the view of the items in the display unit. Thus, it is Applicants' position that Coles does not teach all of the limitations of the independent claims. Moreover, the limitations of the presently presented claims would not be obvious to one of ordinary skill in the art for at least the reasons outlined above.

Claims 19, 20, 22-24, 26-28, and 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournier (U.S. Pat. No. 4,746,010). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Fournier teaches boxes of card stock for packaging taco shells and related filling materials, which boxes are convertible by the consumer into trays for carrying filled tacos from stove to table (See Abstract and Col. 1, lines 5-10).

Applicants' representatives have reviewed Fournier and have been unable to locate any teaching or suggestion of an insert that is configured to receive a stack of flexible articles within the channel of the insert and is further configured to be stacked vertically upon and beneath other such packages as required by amended independent claims 19 and 30. Instead, Fournier teaches spaced apart cut-outs wherein the tacos do not come into contact with each other (See Figures 1-6). These cut-outs are adjacent to rigid projections which hold the taco in a stable upright position (See Figs. 2, 4, and 6). Fournier does not teach or suggest the desirability of containing a stack of flexible articles within the channel of the insert as required by amended independent claims 19 and 30. In this regard, the taco of Fournier would not fit into the channel of the insert. Figure 2 of Fournier shows the taco resting on a rigid projection whereby the ends of the taco extend beyond as well as above the channel. In order for the taco to fit inside the channel it would have to be turned on its side and the contents of the taco shell would fall out. Additionally, even if it were possible to stack the articles of Fournier (filled tacos) inside the channel, it would be difficult to obtain one taco without touching at least one other taco. This would result in unsanitary conditions for the tacos and render Fournier's device inoperable for its intended purpose. Thus, it is Applicants' position that Fournier does not teach all of the limitations of independent claims 19 and 30. Moreover, the limitations of the present claims would not be obvious at least for the reasons outlined above.

Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Kotliar (U.S. Pat. No. 4,603,825). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Kotliar teaches a taco holder having an extended flat bottom with side walls, the latter being provided with slots wide enough to accommodate fingers to reach in and pick up the partially eaten taco (See Abstract and Col. 1, lines 50-61)

Applicants' representatives have reviewed Kotliar and have been unable to locate any teaching or suggestion of an insert that is configured to receive a stack of flexible articles in the channel of the insert and is further configured to be stacked vertically upon and beneath other such packages as required by amended independent claim 30. Instead, Kotliar teaches a taco holder having side walls with vertically extending slots. The rigid slots allow the taco to be held in an upright position where all of the food can be retained in the shell (See Col. 2, lines 34-44). Kotliar does not teach or suggest the desirability of stacking flexible articles in the channel of the insert as required by amended independent claims 30. In this regard, Kotliar teaches the sanitary use of slots for reach in and pick up of partially eaten tacos. Stacking tacos inside the channel would defeat the express purpose of Kotliar by rendering the pick up of tacos unsanitary. Additionally, as with Fournier, stacking tacos inside the channel could result in the contents of the taco falling out. Thus, a review of Kotliar reveals that Kotliar does not teach all of the limitations of independent claim 30.

#### **V. 35 U.S.C. 103 Rejections**

Claims 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier (U.S. Pat. No. 4,746,010). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

With respect to the rejection under 35 U.S.C. § 103(a), it is well settled that teachings of a reference can be modified only when there is some objective teaching or suggestion in the reference itself or knowledge generally available to one of ordinary skill in the art as to the desirability or incentive of such a modification. See MPEP §2143. If the prior art provides no

reason for one of ordinary skill in the art to modify the prior art as taught by the claimed invention, the modification would not have been obvious.

It is the Applicants' position that the Patent and Trademark Office has failed to establish prima facie obviousness with respect to the teachings of Fournier.

As discussed above, Applicants' representatives have reviewed Fournier and have been unable to locate any teaching or suggestion of an insert that is configured to receive a stack of flexible articles in the channel of the insert and is further configured to be stacked vertically upon and beneath other such packages as required by amended independent claim 19, upon which dependent claims 25 and 29 directly or indirectly depend.

In this regard, Fournier actually teaches away from Applicants' invention as represented by amended independent claim 19. Fournier teaches spaced apart cut-outs wherein articles (filled tacos) do not come into contact with each other (See Figures 1-6). These cut-outs are adjacent to rigid projections which hold the taco in a stable upright position to extend both above and beyond the insert (See Figs. 2, 4, and 6).

In marked contrast, amended independent claim 19 requires that the insert be configured to receive a stack of articles inside the channel of the package insert without the need for rigid projections to hold the articles in a stable upright position. Moreover, independent claim 19 requires that the insert be further configured to be stacked vertically upon and beneath other such packages.

Additionally, even if the tacos of Fournier could be stacked inside the channel of the insert there would have been no motivation to do so because the taco of Fournier would have to be turned on its side to fit inside Fournier's channel whereby the contents of the taco could fall out. Further, if the tacos were stacked together, it would be unsanitary for multiple Diners to reach into the channel to grab tacos. Thus, one of ordinary skill in the art would not have been motivated at the time of Applicant's invention to modify Fournier taco tray to create Applicants' package insert.

With respect to Claim 25, the Office Action states that it would have been an obvious matter of design choice to one of ordinary skill in the art to include truncated triangular support ribs. Applicants respectfully disagree. The truncated triangular support ribs provide a blunt distal end that better resists folding and bending. The proximal portion of the cutout defining the

truncated triangular support ribs keep stress from concentrating towards in one area of the rib and helps prevent tears in any material surrounding the package.

With respect to Claim 29, the Office Action states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the package insert made of corrugated board. Applicants respectfully disagree. The corrugated materials provide support to the rib and helps prevent it from bending, particularly when the corrugation or fluting is oriented vertically in use.

Accordingly, it is the Applicants' position that the applied references are insufficient to establish *prima facie* obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

Claims 2-10, 20-28, 31-33, and 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles et al (U.S. Pat. No. 4,427,108) as applied to claims 1, 19, 30, and 38 and further in view of Fournier (U.S. Pat. No. 4,746,010). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, Applicants' representatives have reviewed Coles et al. and have been unable to locate any teaching or suggestion of a package of flexible articles having an insert partially surrounding the flexible articles, wherein each side wall of the insert includes a ***plurality of cut-outs*** extending into the wall from the free edge thereof to form a ***plurality of spaced-apart support ribs*** as required by amended independent claims 1, 19, 30, and 38.

Fournier does not overcome the deficiencies of Coles. In this regard, there is no motivation for one of ordinary skill in the art to combine the stackable display unit of Fournier with the taco holder of Coles. For example, Coles is a stackable display unit. If Coles utilized the rigid projections of Fournier within its display unit, then the view of the items on display would be blocked. This blockage would render Coles inoperable for its intended purpose. Additionally, Fournier teaches its tacos (or other items) extend outside its side wall and extend above the rigid projections which hold the tacos (or other food items) in a stabilized upright position. Incorporating such teachings of Fournier into the stackable display unit of Coles would render the stackable display unit of Coles inoperable for its intended purpose, at least because it would no longer be stackable. Importantly, Coles' display unit has tabs in communication with the side walls whereby the display items do not extend beyond the height of the tabs. Additionally, Coles' display unit has a cover which contains the display items within the display unit, protects the sachets, and allows

stacking of multiple display units.

Thus, one of ordinary skill in the art would find nothing to motivate and in fact much to dissuade them from modifying Coles' stackable display unit to include rigid projections where by items could extend outside of and above the side walls. Similarly, one of ordinary skill in the art would find nothing to motivate and in fact much to dissuade them from modifying Coles' stackable display unit to remove the protective cover so that multiple display items could not be stacked and the sachets could not be protected.

Accordingly, it is the Applicants' position that the applied references are insufficient to establish *prima facie* obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles et al. (U.S. Pat. No. 4,427,108) as applied to claim 1 and further in view of McQueeney et al. (U.S. Pat. No. 5,361,905). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, Applicants' representatives have reviewed Coles et al. and have been unable to locate any teaching or suggestion of a package of flexible articles having an insert partially surrounding the flexible articles, wherein each side wall of the insert includes a **plurality of cut-outs** extending into the wall from the free edge thereof to form a **plurality of spaced-apart support ribs** as required by amended independent claim 1.

McQueeney does not overcome the deficiencies of Coles. In this regard, there is no motivation for one of ordinary skill in the art to combine McQueeney with Coles. Additionally, notwithstanding the lack of motivation to combine McQueeney with Coles; McQueeney, like Coles, fails to teach or suggest a package of flexible articles having an insert partially surrounding the flexible articles, wherein each side wall of the insert includes a **plurality of cut-outs** extending into the wall from the free edge thereof to form a **plurality of spaced-apart support ribs** as required by amended independent claim 1.

Coles discloses a stackable display unit having a cover and central wall abutting the base of the tray. The cover may be made of corrugated or solid paperboard and the stackable display unit has an outer film or wrapping around it. The central wall provides the cover with more stability and helps prevents the sachets from sliding forward. McQueeney discloses a package composed of

flexible polymer material but does not include any other cover. The package may be broken into subpackages along a frangible region located across substantially the entire length of the front wall and across substantially the entire length of the back wall. One of ordinary skill in the art would not have been motivated to modify Coles to remove the solid cover because the central wall would then have to be attached to the flexible outer wrapping which would cause the central wall to bend when multiple display units are stacked. Further, one of ordinary skill in the art would not have been motivated to replace Coles' central wall with a frangible region because a frangible region would not provide stability to Coles' solid cover and would not prevent the sachets from sliding forward. Incorporating such teachings of McQueeny into the stackable display unit of Coles would render Coles' inoperable for its intended purpose, at least because of the aforementioned reasons. Importantly, Coles includes a cover on top of the display items which contains the display items within the display unit, protects the sachets, and allows stacking of multiple display units.

Thus, one of ordinary skill in the art would find nothing to motivate and in fact much to dissuade them from modifying Coles' stackable display unit to replace the central wall with McQueeny's frangible region. Similarly, one of ordinary skill in the art would find nothing to motivate and in fact much to dissuade them from removing the cover of Coles' stackable display unit.

Accordingly, it is the Applicants' position that the applied references are insufficient to establish *prima facie* obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles et al. (U.S. Pat. No. 4,427,108) in view Richardson (U.S. Pat. No. 3,918,584). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, Applicants' representatives have reviewed Coles et al. and have been unable to locate any teaching or suggestion of a package of flexible articles having an insert partially surrounding the flexible articles, wherein each side wall of the insert includes a ***plurality of cut-outs*** extending into the wall from the free edge thereof to form a ***plurality of spaced-apart support ribs*** as required by amended independent claim 1.

Richardson does not overcome the deficiencies of Coles. In this regard, there is no motivation for one of ordinary skill in the art to combine Richardson with Coles. Additionally, notwithstanding the lack of motivation to combine Richardson with Coles; Richardson, like Coles,

fails to teach or suggest a package of flexible articles having an insert partially surrounding the flexible articles, wherein each side wall of the insert includes a ***plurality of cut-outs*** extending into the wall from the free edge thereof to form a ***plurality of spaced-apart support ribs*** as required by amended independent claim 1.

Coles discloses a stackable display unit wherein the display items can be viewed within the display unit. Conversely, Richardson teaches a shipping case for cartons or containers. The shipping case of Richardson is completely enclosed except for oval window with a sleeve for removing items. One of ordinary skill in the art would not have been motivated to modify the display unit of Coles to create a shipping case that is almost completely enclosed except for an oval window and a sleeve. This would render Coles inoperable for its intended purpose because it would remove the display items from view.

Accordingly, it is the Applicants' position that the applied references are insufficient to establish *prima facie* obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

In summary, it is submitted that Applicants' claims presently in the application are patentably distinct over the prior art of record. Thus, it is submitted that the present application is in a condition for allowance and favorable action thereon is respectfully requested. The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of the present amendment to permit early resolution of the same.

Appl. No. 10/732,758  
Amdt. dated September 29, 2006  
Reply to Office Action of July 3, 2006

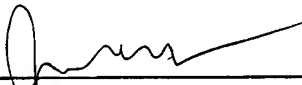
Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.  
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The undersigned may be reached at: 770-587-8620.

Respectfully submitted,

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#### CERTIFICATE OF MAILING

I, Faye R. Farrell, hereby certify that on September 29, 2006 this document is being deposited with the United States Postal Service, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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